IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21/02/2003

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No. 8122 of 2002
and
W.P.M.P.No. 11108/2002 and W.V.M.P.No. 445/2002

Indian Bank,
represented by its Assistant
General Manager, Central Office,
31, Rajaji Salai, Chennai-600 001. .. Petitioner.

-Vs-

1. The President,
District Consumer Disputes
Redressal Forum,
Chennai North, No.212, R.K.Mutt Road,
I Floor, Mylapore, Chennai-4.

2. N.S. Rajan. .. Respondents.

Petition under Article 226 of the Constitution of India, for issuance of a Writ of Prohibition, as stated therein.

For petitioner: Mr. T. Dulip Singh
for M/s. King and Patridge.

For respondents:- Mr. N.S. Rajan-R-2 in Person.

:ORDER

By consent main writ petition itself is taken up for disposal. Indian Bank through its Assistant General Manager, Central Office, Chennai-1 has approached this Court to issue a Writ of Prohibition, forbearing the District Consumer Disputes Redressal Forum, Chennai-4/first respondent herein from deciding or proceeding further in the complaint filed by the second respondent in O.P.No. 309 of 2001.

2. The case of the petitioner is briefly stated hereunder:According to them, a committee was constituted by the Government of India to study the introduction of Voluntary Retirement Scheme in the Nationalised Banks due to the economic reforms set in 1990. The Indian Bank Association with the approval of the Government of India, made a model policy for the voluntary

retirement and advised all Public Sector Banks the salient features of the scheme for implementing the scheme, with the approval of the respective Bank's Board. Thus, the Indian Bank Employees VRS-2000 (hereinafter referred to as " VRS") was formulated in line with the Voluntary Retirement Scheme recommended by Indian Bank Association and the same was adopted by the Bank Board on 7-9-2000. A circular was issued to that effect on 9-11-2 000, inviting applications under the VRS from desirous employees/ officers. The scheme was kept open for a period of one month from 27-11-2 000 to 26-12-2000 for submitting application. According to VRS, permanent employees/officers with a minimum of 15 years of completed service or 40 years of age as on 26-12-2000 are eligible to apply. Having regard to the financial position and the cash flow, it was stated in the VRS that 50 per cent of the ex-gratia amount will be paid in cash, the balance will be paid in bonds/fixed deposits or in instalments as may be decided by the Board of the Bank. After receipt of the applications up-to the last date, a detailed analysis was made by the bank for accepting or rejecting the VRS application received. The Board in its meeting held on 27-12-2000 approved the modalities devised by the bank for relieving the applicants in a phased manner. As on 11 -7-2001 all applications received under VRS were disposed of by the bank in accordance with the Scheme. The VRS was introduced by the bank for the specific purpose of revival of the bank. It was not intended to be a welfare scheme to allow the employees whoever wants to get away with huge amount paid as compensation as per the VRS. As per Rule 41 (5)(b) of the Indian Bank Employees Pension Rule, 1995, the commutation amount is determined from the date of submission of application for commutation. In respect of settlement of pension, the guideline approved by Ministry of Finance was circulated by Indian Banks Association to all banks. As per the guideline, the period of time for settling retirement benefits to those who retired under Voluntary Retirement, compulsory premature retirement, retirement on invalid grounds in 3 months from the date of retirement. In the above mentioned categories, the number of employees to be relieved in a given period is very negligible. Whereas under VRS, the employees were relieved in batches. The bank has relieved 3,295 employees within a short period of time. As a result, the pension settlement were made within 3 to 4 + months. While so, 144 employees who were relieved on VRS, filed complaints before the first respondent in O.P.Nos. 263 to 406 of 2001. The complaint filed by the 2nd respondent was taken on file as O.P.No. 309 of 2001. The complainant has mentioned in the complaint certain deficiencies in service. Therefore, they are entitled to invoke the provisions of the Consumer Protection Act, 1986. The dispute is between employer and employee regarding the benefits accrued in the service. Hence, it cannot be construed that the second respondent is a consumer who consumed any goods or hired any service from the petitioner. Hence the first respondent has no jurisdiction to entertain the complaint filed by the 2nd respondent. Further, the service rendered free of charge or contract of personal service is outside the purview of service as defined under Section 2 (1) (o) of the said Act. Accordingly, the complaint cannot be adjudicated by the first respondent.

3. The second respondent/complainant before the District Consumer Redressal Forum has not filed counter affidavit, however filed a written argument, stating that the first respondent Consumer Forum has jurisdiction to consider his claim.

4. Heard Mr. T. Dulip Singh, learned counsel for the petitioner/bank and the second respondent appearing in person.

5. The only question that is to be considered in this writ petition is whether the Consumer Redressal Form/first respondent herein, has jurisdiction to decide or proceed further in the complaint filed by the second respondent in O.P.No. 309/2001?

6. There is no dispute that in order to reduce establishment cost and increase profitability in Nationalised Banks, a committee was constituted by the Government of India to study the introduction of VRS. Based on the report of the Indian Bank Association, a model policy for VRS was formulated. It is also not disputed that the Indian Bank Employees VRS-2000 (in short "VRS") was formulated in line with the Voluntary Retirement scheme recommended by Indian Bank Association and the same was adopted by the Bank Board on 7-9-2000. It is seen that the Scheme was kept open for a period of one month from 27 -11-2000 to 26-12-2000 for submitting applications. In view of the fact that the petitioner bank highlighted the salient features, eligibility and benefits under VRS in the affidavit, I am not referring the Scheme once again. It is the grievance of the second respondent that he was an employee of the bank and he opted for Voluntary Retirement under the VRS 2000 Scheme. According to him, he was retired from service on 28-2-2001 and while calculating the pension he was not given the notional addition of 5 years weightage to the qualifying service as per Regulation 29 (5) of the Indian Bank Employee Pension Regulations, 1995. It is also his grievance that pension has not been calculated on his last drawn basic, whereas gratuity, provident fund, leave wages and other benefits have been calculated on the basis of last drawn basic pay. It is also his grievance that even the pension was not given immediately after one month from the date of retirement. He was not paid interest for the delayed period. It is further stated that it was his further grievance that he was relieved from the service of the bank under VRS on 28-2-2001. On 2-3-2001 a letter was given for the commutation of 1/3rd of the basic pension. But the commutation was given to the 2nd respondent only on 7-7-2001 i.e., after a lapse of nearly 4 months for which no interest was given for the delayed period and at the same time, according to him, his pension was reduced to that effect from the very beginning, which is highly unjustifiable. Highlighting the above details, the 2nd respondent approached the District Consumer Forum for filing a O.P., stating that there is clear deficiency of service on the part of the bank in not crediting the commuted value of pension to his account and at the same time making deduction of the amount of pension so commuted. It is not necessary for this Court to go into the merits of the claim made by the second respondent herein. The only question is whether first respondent has jurisdiction to consider the grievance/complaint of the second respondent? In an answer to the said question, it is useful to refer the relevant provisions from the Consumer Protection Act, 1986 (hereinafter referred to as "the Act"): "Section 2 (c) "complaint" means any allegation in writing made by a complainant that(i) xx xx (ii) xx xx (iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect. (iv) xx xx (d) "consumer" means any person who,(i) xx xx (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of

deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person; Explanation.- xx xx (e) xx xx (f) XX XX (g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service; (h) xx xx (o) "service" means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both housing construction entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;"

7. I have already referred to the complaint of the second respondent before the District Consumer Disputes Redressal Forum. In the complaint, the following allegations were mainly made against the petitioner bank. They are:

"a) While calculating pension the complainant was not given notional addition of 5 years weightage to the qualifying service as per Regulations 29 (5) of the Indian Bank employee Pension Regulations, 1995. b) The pension was not calculated on the basis of the complainant's last drawn basic; whereas the gratuity, PF, leave wages and other benefits were calculated on the basis of the last drawn basic pay. c) The pension was not given immediately after one month from the date of retirement. d) The complainant was not paid interest for the delayed payments."

With the above allegations, the second respondent/complainant approached the District Consumer Redressal Form stating that there is " deficiency in service". There is no dispute that the first respondentDistrict Consumer Redressal Forum is a creation of a statute namely, the Consumer Protection Act, 1986. The jurisdiction of the first respondent is clearly demarcated in the Act. The perusal of various averments in the complaint shows that the dispute is between employer and employee regarding the benefits accrued in the service. I have already referred to Section 2 (1) (o) of the Act which defines the term " service". A reading of the above definition makes it clear that service rendered free of charge or under contract of personal service is outside the purview of the Act. As rightly contended, since the second respondent did not avail any service as defined under Section 2 (1) (o), the first respondent-District Consumer Rederessal Forum has no jurisdiction to entertain the complaint filed by the second respondent. In this regard, it is relevant to refer a decision of the Apex Court in INDIAN MEDICAL ASSOCIATION v. V.P. SHANTHA, reported in AIR 199 6 Supreme Court 550 wherein Their Lordships have considered and held that the service rendered by medical practitioners cannot come within the definition of Section 2 (1) (o). It is useful to refer the following conclusion of Their Lordships: (para 41 and 56)

"Para 41. Shri Salve has urged that the relationship between a medical

practitioner and the patient is of trust and confidence and, therefore, it is in the nature of a contract of personal service and the service rendered by the medical practitioner to the patient is not 'service' under Section 2(1)(o) of the Act. This contention of Shri Salve ignores the well recognised distinction between a ' contract of service' and a 'contract for services'. (see: Halsbury's Laws of England, 4th End., Vol.16, para 501; DHAARANGADHARA CHEMICAL WORKS LTD., v. STATE OF SAURASHTRA, 1957 SCR 152 at p.157: (AIR 1957 SC 2 64). A 'contract for services' implies a contract whereby one party undertakes to render services e.g. professional or technical services, to or for another in the performance of which he is not subject to detailed direction and control but exercises professional of technical skill and used his own knowledge and discretion. (See: Oxford Companion to Law, p.1134). A 'contract of service' implies relationship of master and servant and involves an obligation to obey orders in the work to be performed and an obligation to obey orders in the work to be performed and as to its mode and manner of performance. (See: Stroud's Judicial Dictionary, 5th Edn.,pa.540; Simmons v. Heath Laundry Co., (1910) 1 KB 543; and Dharangadhara Chemical Works (supra) at p.159). We entertain no doubt that Parliamentary draftsman was aware of this well accepted distinction between "contract of service" and " contract for service" and has deliberately chosen the expression " contract of service" instead of the expression 'contract for services', in the exclusionary part of the definition of 'service' in Section 2(1)(o). The reason being that an employer cannot be regarded as a consumer in respect of the services rendered by his employee in pursuance of a contract of employment. By affixing the adjective 'personal' to the word "service" the nature of the contracts which are excluded is not altered. The said adjective only emphasizes that what is sought to be excluded is personal service only. The expression "contract of personal service" ion the exclusionary part of Section 2 (1)(o) must, therefore, be construed as excluding the service rendered by an employee to his employer under the contract of personal service from the ambit of the expression "service".

Para 56. (4) .....The service rendered by a medical officer to his employer under the contract of employment would be outside the purview of 'service' as defined in Section 2(1)(o) of the Act."

8. In STATE OF ORISSA v. DIVISIONAL MANAGER, LIC., reported in AIR 1996 Supreme Court 2519, two Judges Bench of the Supreme Court, following 3 Judges Bench decision rendered in Indian Medical Association case (AIR 1996 SC 550), has concluded that, (para 7)

"7. It is not in dispute that the respondent was a Government servant and, therefore, he is bound by the service conditions and the State was rendering services free of charge to the contesting respondent. Under those circumstances the Government servant has been excluded from the purview of the Act to claim any damages against the State under the Act. Therefore, if any claim arises for the contesting respondent, it would be open to him to claim, in any other forum, but not under the Act..."

9. In the light of the various definitions, as seen from Section 2 of the Act and the dictum laid down by the Supreme Court, in the above referred cases, it

is clear that the Government servant has been excluded from the purview of the Consumer Protection Act to claim damages/compensation against the Stat e under the Act. However, if any claim arises, it would be open to him/her to pursue the same in any other forum, namely, either before this Court under Section 226 of the Constitution of India or before the competent Civil Court.

10. The second respondent appearing in person would contend that since interest is to be given for the delayed credit of commutation amount, the Consumer Forum has jurisdiction. Though the second respondent has cited several decisions in support of his claim, on going through the factual details therein, I am of the view that the same are distinguishable and not applicable to the facts of the case on hand. Though the relationship comes to an end when the employees are relieved after the acceptance of VRS applications, since the question that is to be decided relates to VRS., formulated and implemented by the bank under certain terms and conditions, and also relates to "contract of personal service" in the exclusionary part of Section 2(1)(o), it must be construed as excluding the services rendered by an employer to his employee under the contract of personal service from the ambit of the expression "service". Though as per Section 12 of the Act, the first respondent can entertain complaint, in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided, since neither goods were sold to the second respondent nor service availed from the petitioner, I am of the view that the entertainment of the complaint of the second respondent by the District Consumer Redressal Forum is without jurisdiction and the objection raised in this score by the bank is well-founded. It is to be noted that this Court is not underestimating the entitlement of the second respondent. It is also made clear that this Court has not considered the eligibility or otherwise of the claim of the second respondent. In the light of the various provisions in the Consumer Protection Act, the service conditions of the 2nd respondent, more particularly the VRS and other terms and conditions and in view of the decision of the Supreme Court referred to above, I am satisfied that the first respondent committed an error in entertaining the complaint filed by the second respondent and I hold that the action of the first respondent in issuing Notice to the petitioner is without jurisdiction. It is also brought to my notice that the President of Indian Bank Voluntary Retirees Welfare Association has filed two writ petitions viz., W.P.Nos. 12075/2001 and 6751/2001 before this Court seeking for certain directions to the bank regarding their retirement benefits like Provident Fund, Gratuity, Pension as per Indian Bank (Employees) Pension Regulations, 1995, etc. If that is so, it is for them to pursue the claim in this case on the same line. Further, as stated earlier, the second respondent is permitted to file a suit or writ petition before this Court to vindicate his grievance.

11. In the light of what is stated above, the Writ Petition is allowed with the above observation. No costs. Consequently, connected miscellaneous petitions are closed. 21-02-2003 R.B. Index: Yes. Internet: Yes. To:The President, District Consumer Disputes Redressal Forum, Chennai North, No.212, R.K.Mutt Road, I Floor, Mylapore, Chennai-4.

Internet: Yes

Dt:- 21-02-2003